

HOUSE REPUBLICAN LEGAL STAFF



*House of Representatives*  
Commonwealth of Pennsylvania  
Harrisburg

SUITE B-6 MAIN CAPITOL  
PO BOX 202228  
HARRISBURG, PA 17120-2228  
PHONE: (717) 783-1510  
FAX: (717) 783-7728

November 24, 2014

**MUR 6886**  
**Re: Honorable Samuel H. Smith**

CELA

2014 NOV 25 PM 2:33

RECEIVED  
FEDERAL ELECTION  
COMMISSION

VIA USPS Mail and email (fhampton@fec.gov)

Federal Election Commission  
Office of Complaints Examination  
And Legal Administration  
Attn: Frankie Hampton, Paralegal  
999 E Street, NW  
Washington, DC 20436

Dear Ms. Hampton:

This letter is in response to the communication received by the Honorable Samuel H. Smith, Speaker of the Pennsylvania House of Representatives, concerning Federal Election Commission complaint number MUR 6886. The letter was addressed to Speaker Smith in his capacity as Chair of the House Bipartisan Management Committee of the Pennsylvania House of Representatives.

Nothing in this letter shall be construed as a waiver or limit of any privilege or immunity, including Eleventh Amendment immunity,<sup>1</sup> sovereign immunity, legislative immunity, speech or debate privilege or any other applicable privilege or immunity.

Based on the information received from the Federal Election Commission, a complaint has been filed which alleges that a Pennsylvania State Representative<sup>2</sup> has used "his state e-mail list to email voters on behalf of his Congressional candidacy." In short, such alleged conduct would be in conflict with the Public Official and Employee Ethics Act (Ethics Act),<sup>3</sup> the General

<sup>1</sup> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI.

<sup>2</sup> Not Speaker Smith.

<sup>3</sup> The Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 et seq., is attached as Appendix A.

110074N/98010

Operating Rules of the Pennsylvania House of Representatives (House Rules) and the Ethical Conduct Rules of the Pennsylvania House of Representatives (Ethical Conduct Rules).<sup>4</sup>

After receipt of the notification and complaint, we had the opportunity to speak with Ruth Heilizer of the Federal Election Commission and appreciated her explanation of the procedural aspects of the complaint and any response. This letter and accompanying documents are submitted to, quoting from the Federal Election Commission letter, "demonstrate in writing that no action should be taken against the State of Pennsylvania" to the extent such term ("State of Pennsylvania") refers to Speaker Smith, the House Bipartisan Management Committee or the Pennsylvania House of Representatives as a legislative body. The State of Pennsylvania, whether used in reference to Speaker Smith, the House Bipartisan Management Committee or the Pennsylvania House of Representatives as a legislative body, has specifically taken steps to prevent the conduct alleged in the complaint.

As Speaker Smith has no knowledge concerning whether the respondent against whom the complaint was filed (Citizens for Boyle) has engaged in the conduct alleged, this letter takes no position as to those specific allegations.

### **ETHICS ACT**

The Ethics Act states that "[n]o public official ... shall engage in conduct that constitutes a conflict of interest." 65 Pa.C.S. § 1103(a). A "conflict of interest" includes "use by a public official ... of the authority of his office ... for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated." 65 Pa.C.S. § 1102 (definition of "conflict of interest"). A conflict of interest is considered a felony under the Ethics Act. 65 Pa.C.S. § 1109(a). The Pennsylvania State Ethics Commission, which is the entity charged with administration of the Ethics Act, has addressed the use of government resources for campaign purposes and explained as follows:

In applying Section 1103(a) of the Ethics Act ... it is noted that the use of government staff, time, equipment, facilities, or property for non-governmental purposes—including business, personal, or political purposes—is generally prohibited and may form the basis for a violation of Section 1103(a) of the Ethics Act. See, e.g., Confidential Opinion, 05-001; Heck, Order 1251, Holt, Order 1153 (business purposes); Moore, Order 1317, Meduka, Order 1277, Sullivan, Order 1245, Dovidio, Order 1202 (personal purposes); Habay, Order 1313, Livingston, Order 1030, Rockefeller, Order 1004, Freind, Order 800 (political purposes). This Commission has long held that government offices, facilities, equipment, and personnel are to be used for governmental purposes and not for private, business or campaign/re-election activities. See, Smythe, Order 1121; Rakowsky, Order 943; Eck, Order 787; Freind, supra; Ferlo, Opinion 97-005.

<sup>4</sup> The relevant sections of the General Operating Rules of the Pennsylvania House of Representatives for the 2013-2014 Session, as well as the Ethical Conduct Rules of the Pennsylvania House of Representatives for the 2013-2014 Session, are attached as Appendix B.

Dennis, Opinion 07-003, p. 3.<sup>5</sup>

### HOUSE RULES

For a number of legislative sessions, the General Operating Rules of the Pennsylvania House of Representatives have expressed the limitation that public moneys appropriated for the use of legislators may only be used for legislative purposes. In its current iteration, House Rule 14, concerning Members' and Employees' Expenses, provides as follows:

**[A]llowable expenses of members may be used for any legislative purpose or function, including but not limited to the following:**

....

**No money appropriated for members' and employees' expenses shall be used for contributions to political parties or their affiliated organizations.**

....

*(emphasis in bold added).*

### ETHICAL CONDUCT RULES

Taking a moment to recount some historical background, it was during Speaker Smith's initial term as the constitutional presiding officer of the Pennsylvania House of Representatives that the House first adopted official ethical conduct rules. See H.R. 1, P.N. 001 of 2011, p. 37 et seq.<sup>6</sup> This House Resolution was sponsored by the two Caucus Leaders in the House, Representative Mike Turzai and Representative Frank Dermody.<sup>7</sup>

The current Ethical Conduct Rules contain a general prohibition against political campaign activity using House resources or House funds. Ethical Conduct Rule 2E. More important for the purpose of this inquiry, however, is the specific rule concerning the use of mailing lists. Ethical Conduct Rule 2E(12) provides as follows:

**(12) Official House mailing lists shall be used solely for legislative purposes and shall not be provided to a candidate, political party, political committee, campaign, campaign committee political organization or political body to be used for any campaign activity.**

*(emphasis added).*

<sup>5</sup> Dennis, Opinion 07-003, is attached as Appendix C.

<sup>6</sup> "RESOLVED, That the Rules of the House of Representatives be amended by adding rules to read: ETHICAL CONDUCT RULES OF THE HOUSE OF REPRESENTATIVES." H.R. 1, P.N. 001 of 2011, p. 37, lines 7-10.

<sup>7</sup> Speaker Smith was carbon-copied on a similar Federal Election Commission letter sent to Representative Dermody concerning the current allegations.

Ethical Conduct Rule 1E defines "official house mailing lists" as:

**Any list containing individuals, companies or vendors, including names, addresses, telephone numbers or e-mail addresses that are procured, compiled, maintained or produced with House funds.**

*(emphasis added).*

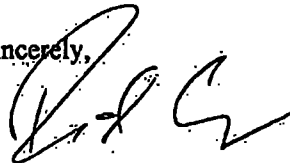
### **CONCLUSION**

The Pennsylvania Ethics Act, as well as the constitutionally authorized<sup>8</sup> House Rules and Ethical Conduct Rules, all address the conduct alleged in the complaint. Pennsylvania has provided specific enforcement mechanisms for alleged violations of the Ethics Act or the applicable rules. See 65 Pa.C.S. § 1107 - § 1110; House Rule 47. To the extent such alleged conduct occurred, it was not authorized by the State of Pennsylvania. This clearly demonstrates that no action should be taken against Speaker Smith, the House Bipartisan Management Committee or the Pennsylvania House of Representatives as a legislative body to the extent such are considered the "State of Pennsylvania."

As noted above, this letter takes no position concerning whether the respondent against whom the complaint was filed (Citizens for Boyle) has engaged in inappropriate activity.

If you should need further information or wish this letter and the appendices to be transmitted in a different manner, please do not hesitate to contact us.

Sincerely,



Rodney A. Corey, Chief Counsel

Enclosures:

Appendix A  
Appendix B  
Appendix C

<sup>8</sup> Pa. Const., Art. II, § 11. Powers of each house; expulsion.

Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

**SECRET**

**CHAPTER 11**  
**ETHICS STANDARDS AND FINANCIAL DISCLOSURE**

**Sec.**

- 1101. Short title of chapter.
- 1101.1. Purpose.
- 1102. Definitions.
- 1103. Restricted activities.
- 1104. Statement of financial interests required to be filed.
- 1105. Statement of financial interests.
- 1106. State Ethics Commission.
- 1107. Powers and duties of commission.
- 1108. Investigations by commission.
- 1109. Penalties.
- 1110. Wrongful use of chapter.
- 1111. Supplemental provisions.
- 1112. Conflict of law.
- 1113. Severability.

**Enactment.** Chapter 11 was added October 15, 1998, P.L.729, No.93, effective in 60 days.

**Special Provisions in Appendix.** See sections 2(c) and (d) and 5 of Act 93 of 1998 in the appendix to this title for special provisions relating to continuation of members of State Ethics Commission, continuation of appropriations and codification of existing law.

**Cross References.** Chapter 11 is referred to in sections 13A05, 13A09 of this title; section 1201.1 of Title 4 (Amusements); sections 10A05, 1404 of Title 8 (Boroughs and Incorporated Towns); section 5508.3 of Title 53 (Municipalities Generally); sections 1511, 6017 of Title 64 (Public Authorities and Quasi-Public Corporations); section 2115 of Title 68 (Real and Personal Property); sections 8205, 9103 of Title 74 (Transportation).

**§ 1101. Short title of chapter.**

This chapter shall be known and may be cited as the Public Official and Employee Ethics Act.

**§ 1101.1. Purpose.**

(a) **Declarations.**--The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of this Commonwealth in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials and employees in their actions. Thus, the General Assembly by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.

15044376815

**(b) Recognition.**--It is recognized that many public officials, including most local officials and members of the General Assembly, are citizen-officials who bring to their public office the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in order to foster maximum compliance with its terms, this chapter shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this chapter.

**(c) Legislative intent.**--It is the intent of the General Assembly that this chapter be administered by an independent commission composed of members who are cognizant of the responsibilities and burdens of public officials and employees and who have demonstrated an interest in promoting public confidence in government.

#### **§ 1102. Definitions.**

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

**"Advice."** Any directive of the chief counsel of the State Ethics Commission issued under section 1107(11) (relating to powers and duties of commission) and based exclusively on prior commission opinions, this chapter, regulations promulgated pursuant to this chapter and court opinions which interpret this chapter.

**"Aggregate."** The total of all gifts received from a single source as provided in section 1105(b) (6) (relating to statement of financial interests).

**"Authority of office or employment."** The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

**"Business."** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

**"Business with which he is associated."** Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

**"Candidate."** Any individual who seeks nomination or election to public office by vote of the electorate, other than a judge of elections, inspector of elections or official of a political party, whether or not such individual is nominated or elected. An individual shall be deemed to be seeking nomination or election to such office if he has:

(1) received a contribution or made an expenditure or given his consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election to such office, whether or not the individual has announced the specific office for which he will seek nomination or election at the time the contribution is received or the expenditure is made; or

(2) taken the action necessary under the laws of this Commonwealth to qualify himself for nomination or election to such office.

The term shall include individuals nominated or elected as write-in candidates unless they resign such nomination or elected office within 30 days of having been nominated or elected.

**"Commission."** The State Ethics Commission.

**"Confidential information."** Information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

**"Conflict" or "conflict of interest."** Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

**"Contract."** An agreement or arrangement for the acquisition, use or disposal by the Commonwealth or a political subdivision of consulting or other services or of supplies, materials, equipment, land or other personal or real property. The term shall not mean an agreement or arrangement between the State or political subdivision as one party and a public official or public employee as the other party, concerning his expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his current public employment with the Commonwealth or a political subdivision.

**"De minimis economic impact."** An economic consequence which has an insignificant effect.

**"Executive-level State employee."** The Governor, Lieutenant Governor, cabinet members, deputy secretaries, the Governor's office staff, any State employee with discretionary powers which may affect the outcome of a State agency's decision in relation to a private corporation or business or any employee who by virtue of his job function could influence the outcome of such a decision.

**"Financial interest."** Any financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

**"Findings report."** An initial report containing findings of fact as determined by the State Ethics Commission's investigation but not containing any conclusions of law or any determination of whether there has been a violation of law.

**"Frivolous complaint."** A complaint filed in a grossly negligent manner without basis in law or fact.

**"Gift."** As defined in section 13A03 (relating to definitions).

**"Governmental body."** Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a governmental function.

**"Governmental body with which a public official or public employee is or has been associated."** The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

**"Honorarium."** Payment made in recognition of published works, appearances, speeches and presentations and which is not intended



as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact.

**"Hospitality."** As defined in section 13A03 (relating to definitions).

**"Immediate family."** A parent, spouse, child, brother or sister.

**"Income."** Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. The term refers to gross income and includes prize winnings and tax-exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children.

**"Indirect interest in real estate."** Any business entity the assets of which are 80% or more in real property.

**"Ministerial action."** An action that a person performs in a prescribed manner in obedience to the mandate of legal authority without regard to or the exercise of the person's own judgment as to the desirability of the action being taken.

**"Nominee."** Any person whose name has been submitted to a public official or governmental body vested with the power to finally confirm or reject proposed appointments to public office or employment.

**"Nonministerial actions."** An action in which the person exercises his own judgment as to the desirability of the action taken.

**"Opinion."** A directive of the State Ethics Commission issued pursuant to section 1107(10) (relating to powers and duties of commission) setting forth a public official's or public employee's duties under this chapter.

**"Order."** A directive of the State Ethics Commission issued pursuant to section 1107(13) (relating to powers and duties of commission) at the conclusion of an investigation which contains findings of fact, conclusions of law and penalties.

**"Person."** A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

**"Political contribution."** Any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, purchase of a ticket to a testimonial or similar fundraising affair, or subscription of money or anything of value except volunteer services, in connection with a political campaign, and any contract, agreement, promise or other obligations, whether or not legally enforceable, to make a political contribution.

**"Political subdivision."** Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.

**"Public employee."** Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

**"Public official."** Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

**"Represent."** To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

**"Solicitor."** A person elected or appointed to the office of solicitor for the political subdivision.

**"Source."** Any person who is a provider of an item reportable under section 1105 (relating to statement of financial interests).

**"State consultant."** A person who, as an independent contractor, performs professional, scientific, technical or advisory service for an agency of this Commonwealth and who receives a fee, honorarium or similar compensation for such services. A State consultant is not an executive-level employee. (Nov. 1, 2006, P.L.1213, No.134, eff. Jan. 1, 2007)

**2006 Amendment.** Act 134 amended the def. of "gift" and added the def. of "hospitality."

#### **§ 1103. Restricted activities.**

(a) **Conflict of interest.**--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

(b) **Seeking improper influence.**--No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

(c) **Accepting improper influence.**--No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment,

based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

**(d) Honorarium.**--No public official or public employee shall accept an honorarium.

**(e) Contingent and severance payments.**--

(1) No person shall solicit or accept a severance payment or anything of monetary value contingent upon the assumption or acceptance of public office or employment.

(2) This subsection shall not prohibit:

(i) Payments received pursuant to an employment agreement in existence prior to the time a person becomes a candidate or is notified by a member of a transition team, a search committee or a person with appointive power that he is under consideration for public office or makes application for public employment.

(ii) Receipt of a salary, fees, severance payment or proceeds resulting from the sale of a person's interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon the assumption or acceptance of public office or employment.

(3) Payments made or received pursuant to paragraph (2) (i) and (ii) shall not be based on the agreement, written or otherwise, that the vote or official action of the prospective public official or employee would be influenced thereby.

**(f) Contract.**--No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.

**(g) Former official or employee.**--No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

**(h) Misuse of statement of financial interest.**--No person shall use for any commercial purpose information copied from statements of financial interests required by this chapter or from lists compiled from such statements.

**(i) Former executive-level employee.**--No former executive-level State employee may for a period of two years from the time that he terminates employment with this Commonwealth be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he actively participated in recruiting to this Commonwealth or that he

actively participated in inducing to open a new plant, facility or branch in this Commonwealth or that he actively participated in inducing to expand an existent plant or facility within this Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand.

**(j) Voting conflict.**--Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

**Applicability.** Section 4(c) of Act 93 of 1998 provided that subsecs. (d) and (e) shall not apply to any matter that occurred before June 26, 1989.

**Cross References.** Section 1103 is referred to in section 1109 of this title; section 1201 of Title 4 (Amusements).

**§ 1104. Statement of financial interests required to be filed.**

**(a) Public official or public employee.**--Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Persons who are full-time or part-time solicitors for political subdivisions are required to file under this section.

**(b) Candidate.**--

(1) Any candidate for a State-level public office shall file a statement of financial interests for the preceding calendar year with the commission on or before the last day for

filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(2) Any candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(3) No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests as set forth in paragraphs (1) and (2). Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.

(c) **Nominee.**--Each State-level nominee for public office shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination. Each nominee for a county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he or she is a nominee and, if different, with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination.

(d) **Failure to file required statement.**--No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required by this chapter.

(e) **Public inspection and copying.**--All statements of financial interests filed pursuant to the provisions of this chapter shall be made available for public inspection and copying during regular office hours, and copying facilities shall be made available at a charge not to exceed actual cost.

**Cross References.** Section 1104 is referred to in section 1109 of this title.

**§ 1105. Statement of financial interests.**

(a) **Form.**--The statement of financial interests filed pursuant to this chapter shall be on a form prescribed by the commission. All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.

(b) **Required information.**--The statement shall include the following information for the prior calendar year with regard to the person required to file the statement:

- (1) Name, address and public position.
- (2) Occupation or profession.
- (3) Any direct or indirect interest in any real estate which was sold or leased to the Commonwealth, any of its agencies or political subdivisions, or purchased or leased from the Commonwealth, any of its agencies or political

subdivisions, or which was the subject of any condemnation proceedings by the Commonwealth, any of its agencies or political subdivisions.

(4) The name and address of each creditor to whom is owed in excess of \$6,500 and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property which is the principal or secondary residence of the person filing shall not be included.

(5) The name and address of any direct or indirect source of income totaling in the aggregate \$1,300 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

(6) The name and address of the source and the amount of any gift or gifts valued in the aggregate at \$250 or more and the circumstances of each gift. This paragraph shall not apply to a gift or gifts received from a spouse, parent, parent by marriage, sibling, child, grandchild, other family member or friend when the circumstances make it clear that the motivation for the action was a personal or family relationship. However, for the purposes of this paragraph, the term "friend" shall not include a registered lobbyist or an employee of a registered lobbyist.

(7) The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed \$650 in an aggregate amount per year. This paragraph shall not apply to expenses reimbursed by a governmental body or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

(8) Any office, directorship or employment of any nature whatsoever in any business entity.

(9) Any financial interest in any legal entity engaged in business for profit.

(10) The identity of any financial interest in a business with which the reporting person is or has been associated in the preceding calendar year which has been transferred to a member of the reporting person's immediate family.

(c) **Reporting amounts.**--Except where an amount is required to be reported pursuant to subsection (b)(6) and (7), the statement of financial interests need not include specific amounts for the items required to be listed.

(d) **Cost-of-living adjustments.**--On a biennial basis the commission shall review the dollar amounts set forth in this section and may increase these amounts to such rates as are deemed reasonable for assuring appropriate disclosure. The commission shall publish any such adjusted threshold amounts in the Pennsylvania Bulletin.

(Nov. 1, 2006, P.L.1213, No.134, eff. Jan. 1, 2007)

**2006 Amendment.** Act 134 amended subsec. (b)(7).

**Cross References.** Section 1105 is referred to in sections 1102, 1107, 1109, 13A05 of this title; section 8204 of Title 74 (Transportation).

**§ 1106. State Ethics Commission.**

(a) **Continuation of commission.**--The State Ethics Commission established under the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, is continued and shall be composed of seven members. The President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House shall each appoint one member. Three members shall be appointed by the Governor without confirmation. No more than two of the members appointed by the Governor shall be of the same political party. No appointee shall have served as an officer in a political party for one year prior to his appointment.

(b) **Term of service.**--Members of the commission shall serve for terms of three years, except that members shall continue to serve until their successors are appointed and qualified.

(c) **Maximum number of terms.**--No member shall be appointed to more than two full three-year terms on the commission.

(d) **Prohibited activities.**--No individual while a member or employee of the commission shall:

- (1) hold or campaign for any other public office;
- (2) hold office in any political party or political committee;
- (3) actively participate in or contribute to any political campaign;
- (4) directly or indirectly attempt to influence any decision by a governmental body other than a court of law or as a representative of the commission on a matter within the jurisdiction of the commission; or
- (5) be employed by the Commonwealth or a political subdivision in any other capacity, whether or not for compensation.

(e) **Vacancy.**--A majority of the commission by resolution shall declare vacant the position on the commission of any member who takes part in activities prohibited by subsection (d). An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he succeeds and is eligible for appointment to two full three-year terms thereafter. Any vacancy occurring on the commission shall be filled within 30 days in the manner in which that position was originally filled.

(f) **Election of chairman and vice chairman.**--The commission shall elect a chairman and a vice chairman. The vice chairman shall act as chairman in the absence of the chairman or in the event of a vacancy in that position.

(g) **Quorum.**--Four members of the commission shall constitute a quorum, and, except as provided in section 1108(g) (relating to investigations by commission), the votes of a majority of the members present are required for any action or recommendation of the commission. The chairman or any four members of the commission may call a meeting provided that advance written notice is mailed to each member and to any person who requests notice of such meetings.

(h) **Compensation.**--Members of the commission shall be compensated at a rate of \$250 per day and shall receive reimbursement for their actual and necessary expenses while performing the business of the commission.

(i) **Staff.**--The commission shall employ an executive director, a chief counsel and such other staff as are necessary to carry out its duties pursuant to this chapter. The executive director shall

be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him by the commission, except that the commission shall not delegate the making of regulations to the executive director. The chief counsel shall be the chief legal officer of the commission. The commission may obtain the services of experts and consultants as necessary to carry out its duties pursuant to this chapter. The State Treasurer and the Attorney General shall make available to the commission such personnel, facilities and other assistance as the commission may request.

(j) **Regulations.**--The commission shall develop regulations that provide for a code of conduct to govern the activities and ethical standards of its members, which code shall subject the members of the commission to no less than is required for public officials or public employees under this chapter.

**§ 1107. Powers and duties of commission.**

In addition to other powers and duties prescribed by law, the commission shall:

(1) Prescribe and publish rules and regulations to carry out the provisions of this chapter.

(2) Prescribe forms for statements and reports required to be filed by this chapter and furnish such forms to persons required to file such statements and reports.

(3) Prepare and publish guidelines setting forth recommended uniform methods of accounting and reporting for use by persons required to file statements and reports by this chapter.

(4) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter.

(5) Inspect statements of financial interests which have been filed in order to ascertain whether any reporting person has failed to file such a statement or has filed a deficient statement. If, upon inspection, it is determined that a reporting person has failed to file a statement of financial interests or that any statement which has been filed fails to conform with the requirements of section 1105 (relating to statement of financial interests), then the commission shall in writing notify the person. Such notice shall state in detail the deficiency and the penalties for failure to file or for filing a deficient statement of financial interests.

(6) Provide that statements and reports filed with the commission be made available for public inspection and copying during regular office hours and provide that copying facilities be made available at a charge not to exceed actual cost and advise other State and local agencies of the provisions of this paragraph.

(7) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements and instruct other State and local agencies which receive and file financial interest statements in the maintenance of systems which facilitate public access to such statements.

(8) Prepare and publish annual summaries of statements and reports filed with the commission.

(9) Preserve statements and reports filed with the commission for a period of five years from date of receipt and advise other State and local agencies which receive and store financial interest statements to preserve such statements for a period of five years from date of receipt.



(10) Issue to any person upon such person's request or to the appointing authority or employer of that person upon the request of such appointing authority or employer an opinion with respect to such person's duties under this chapter. The commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The person requesting the opinion may, however, require that the opinion shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.

(11) Provide written advice to any person or the appointing authority or employer of such person upon their request with respect to such person's duties under this chapter. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission and evidence of good faith conduct in any other civil or criminal proceeding if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time. The person requesting the advice may, however, require that the advice shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.

(12) Initiate an inquiry pursuant to section 1108(a) (relating to investigations by commission) where a complaint has not been filed but where there is a reasonable belief that a conflict may exist.

(13) Issue findings, reports and orders relating to investigations initiated pursuant to section 1108 which set forth the alleged violation, findings of fact and conclusions of law. An order may include recommendations to law enforcement officials. Any order resulting from a finding that a public official or public employee has obtained a financial gain in violation of this chapter may require the restitution plus interest of that gain to the appropriate governmental body. The commission or the Office of Attorney General shall have standing to apply to the Commonwealth Court to seek enforcement of an order requiring such restitution. This restitution requirement shall be in addition to any other penalties provided for in this chapter.

(14) Hold hearings, take testimony, issue subpoenas and compel the attendance of witnesses.

(15) Make recommendations to law enforcement officials either for criminal prosecution or dismissal of charges arising out of violations of this chapter.

(16) Prepare and publish special reports, educational materials and technical studies to further the purposes of this chapter.

(17) Prepare and publish prior to June 1 of each year an annual report summarizing the activities of the commission.

(18) Transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing commission members under this chapter, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.

(19) Hold at least two public hearings each year, of which at least one shall be held in Harrisburg and at least one shall be held in a location other than Harrisburg, to seek input from persons and organizations who represent any individual subject to the provisions of this chapter and from other interested parties.

**Cross References.** Section 1107 is referred to in sections 1102, 1109, 13A08, 13A09 of this title.

**§ 1108. Investigations by commission.**

(a) **Preliminary inquiry.**--Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission, through its executive director, shall conduct a preliminary inquiry into any alleged violation of this chapter. The commission shall keep information, records and proceedings relating to a preliminary inquiry confidential. The commission shall, however, have the authority to refer the case to law enforcement officials during a preliminary inquiry or anytime thereafter without providing notice to the subject of the inquiry. The commission shall complete its preliminary inquiry within 60 days of its initiation.

(b) **Termination of preliminary inquiry.**--If a preliminary inquiry fails to establish reason to believe that this chapter has been violated, the commission shall terminate the inquiry and so notify the complainant and the person who had been the subject of the inquiry. If the commission determines that a complaint is frivolous, it shall so state.

(c) **Initiation of investigation.**--If a preliminary inquiry establishes reason to believe that this chapter has been violated, the commission may, through its executive director, initiate an investigation to determine if there has been a violation. The commission shall keep information, records and proceedings relating to an investigation confidential until a final determination is made, except as otherwise provided in subsection (g). No investigation may be commenced until the person who is the subject of the investigation has been notified and provided a general statement of the alleged violation or violations of this chapter and other applicable statutes with respect to such investigation. Service of notice is complete upon mailing which shall be by certified or registered mail. The commission shall notify the complainant within 72 hours of the commencement of an investigation, and, thereafter, the commission shall advise the complainant and the person who is the subject of the investigation of the status of the investigation at least every 90 days until the investigation is terminated. The commission shall, within 180 days of the initiation of an investigation, either terminate the investigation pursuant to subsection (d) or issue a findings

report pursuant to subsection (e). Upon a showing by the executive director of the need for extension of this period, the commission may extend an investigation for up to two 90-day periods, provided that each 90-day extension shall be approved by a majority vote of members present. In no event shall a findings report be issued later than 360 days after initiation of an investigation.

**(d) Termination of investigation.**--If an investigation conducted under this chapter indicates that no violation has been committed, the commission shall immediately terminate the investigation and send written notice of such determination to the complainant and the person who was the subject of the investigation.

**(e) Findings report.**--The commission, upon the completion of an investigation, shall issue a findings report to the subject of the investigation setting forth the pertinent findings of fact. The subject shall have the right to respond to said findings and to request an evidentiary hearing on said matter. The commission shall grant any request for a hearing. Said hearing shall be held in Harrisburg or, at the request of the subject, in either Philadelphia or Pittsburgh. Any response to the findings report must either admit or deny by corresponding number and letter the pertinent facts set forth. The subject of the investigation shall have access to any evidence intended to be used by the commission at the hearing and any exculpatory evidence developed by the commission in the course of its investigation. Matters not specifically denied in the response shall be deemed admitted. The response must be filed within 30 days of the issuance of the findings report unless the time period is extended by the commission for good cause shown. Hearings conducted upon request shall be instituted within 45 days after the filing of the response.

**(f) Final order.**--Within 30 days of the receipt by the commission of the hearing record or, if no hearing is to be held, within 30 days of the receipt by the commission of the response to the findings report, the commission shall issue an order which shall be final. Upon receipt of a final order, the subject shall have the right to file a petition for reconsideration in accordance with the regulations of the commission.

**(g) Procedure for hearing.**--Hearings conducted pursuant to this section shall be closed to the public unless the subject requests an open hearing. Any person who appears before the commission shall have all of the due process rights, privileges and responsibilities of a party or witness appearing before an administrative agency of this Commonwealth. All witnesses summoned for such hearings shall receive reimbursement for reasonable expenses in accordance with 42 Pa.C.S. § 5903 (relating to compensation and expenses of witnesses). At the conclusion of a hearing concerning an alleged violation and in a timely manner, the commission shall deliberate on the evidence and determine whether there has been a violation of this chapter. At least four members of the commission present at a meeting must find a violation by clear and convincing proof. The names of the members finding a violation and the names of those dissenting and abstaining shall be listed in the order. The determination of the commission, in the form of a final order and findings of fact, shall be a matter of public record.

**(h) Availability of final orders, files and records.**--Orders which become final in accordance with the provisions of this section shall be available as public documents, but the files and

records of the commission relating to the case shall remain confidential.

(i) **Appeal.**--Any person aggrieved by an opinion or order which becomes final in accordance with the provisions of this chapter who has direct interest in such opinion or order shall have the right to appeal therefrom in accordance with law and general rules.

(j) **Retaliation prohibited.**--No public official or public employee shall discharge any official or employee or change his official rank, grade or compensation or deny him a promotion or threaten to do so for filing a complaint with or providing information to the commission or testifying in any commission proceeding. No member of the commission and no employee of the commission shall discharge any employee of the commission or change his official rank, grade or compensation or threaten to do so for providing any information about the internal operations of the commission, not required by law to be kept secret, to any legislator or legislative staff member or testifying in any legislative proceeding.

(k) **Confidentiality.**--As a general rule, no person shall disclose or acknowledge to any other person any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this subsection when the matters pertain to any of the following:

- (1) final orders of the commission as provided in subsection (h);
- (2) hearings conducted in public pursuant to subsection (g);
- (3) for the purpose of seeking advice of legal counsel;
- (4) filing an appeal from a commission order;
- (5) communicating with the commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the commission;
- (6) consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;
- (7) testifying under oath before a governmental body or a similar body of the United States of America;
- (8) any information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of; or
- (9) such other exceptions as the commission by regulation may direct.

(l) **Frivolous complaints and wrongful disclosure.**--If a public official or public employee has reason to believe the complaint is frivolous as defined by this chapter, or without probable cause and made primarily for a purpose other than that of reporting a violation of this chapter, or a person publicly disclosed or caused to be disclosed that a complaint against the public official or public employee has been filed with the commission, the public official or public employee shall notify the commission and the commission, through its executive director, shall conduct an investigation.

(m) **Limitation of time.**--The commission may conduct an investigation within five years after the alleged occurrence of any violation of this chapter.

**Cross References.** Section 1108 is referred to in sections 1106, 1107, 1109, 13A08, 13A09 of this title.

**§ 1109. Penalties.**

(a) **Restricted activities violation.**--Any person who violates the provisions of section 1103(a), (b) and (c) (relating to restricted activities) commits a felony and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than five years, or both.

(b) **Financial interests statement violation.**--Any person who violates the provisions of section 1103(d) through (j), 1104 (relating to statement of financial interests required to be filed) or 1105(a) (relating to statement of financial interests) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both.

(c) **Treble damages.**--Any person who obtains financial gain from violating any provision of this chapter, in addition to any other penalty provided by law, shall pay a sum of money equal to three times the amount of the financial gain resulting from such violation into the State Treasury or the treasury of the political subdivision. Treble damages shall not be assessed against a person who acted in good faith reliance on the advice of legal counsel.

(d) **Impeachment and disciplinary action.**--The penalties prescribed in this chapter do not limit the power of either house of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

(e) **Other violations of chapter.**--Any person who violates the confidentiality of a commission proceeding pursuant to section 1108 (relating to investigations by commission) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both. Any person who engages in retaliatory activity proscribed by section 1108(j) commits a misdemeanor and, in addition to any other penalty provided by law, shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both. Any person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to section 1108 commits a felony and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than five years, or both.

(f) **Civil penalty.**--In addition to any other civil remedy or criminal penalty provided for in this chapter, the commission may, after notice has been served in accordance with section 1107(5) (relating to powers and duties of commission) and upon a majority vote of its members, levy a civil penalty upon any person subject to this chapter who fails to file a statement of financial interests in a timely manner or who files a deficient statement of financial interests, at a rate of not more than \$25 for each day such statement remains delinquent or deficient. The maximum penalty payable under this paragraph is \$250.

(g) **Reliance on solicitor's opinion.**--A public official of a political subdivision who acts in good faith reliance on a

written, nonconfidential opinion of the solicitor of the political subdivision or upon an opinion of the solicitor of the political subdivision, publicly stated at an open meeting of the political subdivision and recorded in the official minutes of the meeting, shall not be subject to the penalties provided for in subsections (a) and (b) nor for the treble damages provided for in subsection (c). However, this subsection shall not apply in situations where the solicitor's opinion has been rendered under duress or where the parties seeking and rendering the solicitor's opinion have colluded to purposefully commit a violation of this chapter.

**Cross References.** Section 1109 is referred to in sections 1201, 1512, 1512.1 of Title 4 (Amusements).

**§ 1110. Wrongful use of chapter.**

(a) **Liability.**--A person who signs a complaint alleging a violation of this chapter against another is subject to liability for wrongful use of this chapter if:

(1) the complaint was frivolous, as defined by this chapter, or without probable cause and made primarily for a purpose other than that of reporting a violation of this chapter; or

(2) he publicly disclosed or caused to be disclosed that a complaint against a person had been filed with the commission.

(b) **Probable cause.**--A person who signs a complaint alleging a violation of this chapter has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based and either:

(1) reasonably believes that under those facts the complaint may be valid under this chapter; or

(2) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information.

(c) **Commission procedures.**--When the commission determines that a complainant has violated the provisions set forth in subsection (a), the commission, upon receiving a written request from the subject of the complaint, shall provide the name and address of the complainant to said subject. If the commission determines that a complainant has not violated the provisions of subsection (a), the commission shall notify the subject accordingly. The subject shall have the right to appeal the commission's determination, and the commission shall schedule an appeal hearing. The subject shall show cause why the complainant violated the provisions of this section. If the commission grants the appeal, the commission shall immediately release the complainant's name and address to the subject. If the commission denies the appeal, it shall present evidence why the complainant's name and address shall not be released.

(d) **Damages.**--When the essential elements of an action brought pursuant to this section have been established, the plaintiff is entitled to recover for the following:

(1) The harm to his reputation by a defamatory matter alleged as the basis of the proceeding.

(2) The expenses, including any reasonable attorney fees, that he has reasonably incurred in proceedings before the commission.

(3) Any specific pecuniary loss that has resulted from the proceedings.

(4) Any emotional distress that has been caused by the proceedings.

(5) Any punitive damages according to law in appropriate cases.

**§ 1111. Supplemental provisions.**

Any governmental body may adopt requirements to supplement this chapter, provided that no such requirements shall in any way be less restrictive than the chapter.

**§ 1112. Conflict of law.**

Except as otherwise provided in Chapter 13 (relating to lobby regulation and disclosure), if the provisions of this chapter conflict with any other statute, ordinance, regulation or rule, the provisions of this chapter shall control.

**§ 1113. Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this chapter and the application of such provisions to other persons and circumstances shall not be affected thereby.

# Appendix B

15044376823



(House Resolution 1, adopted January 1, 2013)

## A RESOLUTION

Adopting permanent rules for the House of Representatives, further providing for definitions, for members' and employees' expenses, for fiscal notes, for House and concurrent resolutions, for standing committees and subcommittees, for organization of standing committees and subcommittees, for powers and duties of standing committees and subcommittees, for ethics committee and for chronic absenteeism; and providing for ethical conduct.

RESOLVED, That the Permanent Rules of the House of Representatives (2011-2012) be adopted as the Permanent Rules of the House of Representatives for the 2013-2014 session of the House of Representatives with the following amendment to the heading, editorial change to Rule 34 and amendment to Rule 46 :

## (2013-2014) GENERAL OPERATING RULES OF THE HOUSE OF REPRESENTATIVES

Rule 1	<u>Speaker Presiding</u>
Rule 1(a)	<u>Equal Opportunity Officer and Advisory Committee</u>
Rule 2	<u>Taking the Chair</u>
Rule 3	<u>Order and Decorum</u>
Rule 4	<u>Questions of Order</u>
Rule 5	<u>Conference and Select Committee Appointments</u>
Rule 6	<u>Signature of the Speaker</u>
Rule 7	<u>Oath to Employees</u>
Rule 8	<u>Supervision of Hall of the House and Committee Rooms</u>
Rule 9	<u>Decorum</u>
Rule 9(a)	<u>Smoking</u>
Rule 10	<u>Debate</u>
Rule 11	<u>Interruption of a Member who Has the Floor</u>
Rule 12	<u>Personal Privilege</u>
Rule 13	<u>Transgression of House Rules</u>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

Rule 14	<u>Members' and Employees' Expenses</u>
Rule 14(a)	<u>Employee Payroll Information</u>
Rule 14(b)	<u>Electronic Availability of Reports</u>
Rule 15	<u>Time of Meeting</u>
Rule 16	<u>Quorum</u>
Rule 17	<u>Order of Business</u>
Rule 18	<u>Introduction and Printing of Bills</u>
Rule 19	<u>Bills Referred to Committees</u>
Rule 19(a)	<u>Fiscal Notes</u>
Rule 19(b)	<u>General Appropriation Bill and Non-Preferred Bills</u>
Rule 20	<u>Bills Confined to One Subject</u>
Rule 21	<u>Consideration of Bills</u>
Rule 22	<u>First Consideration Bills</u>
Rule 23	<u>Second Consideration Bills</u>
Rule 24	<u>Third Consideration and Final Passage Bills</u>
Rule 25	<u>Defeated Bills</u>
Rule 26	<u>Reconsideration</u>
Rule 27	<u>Amendments</u>
Rule 28	<u>Bills Amending Existing Law</u>
Rule 29	<u>Form for Printing Amendments</u>
Rule 30	<u>Bills Amended by the Senate</u>
Rule 31	<u>Bills Vetoed by the Governor</u>
Rule 32	<u>Hospital and Home Appropriations or Acquiring Lands of the Commonwealth</u>
Rule 33	<u>Special Legislation</u>
Rule 34	<u>Nonpreferred Appropriations</u>
Rule 35	<u>House and Concurrent Resolutions</u>
Rule 36	<u>Privileged Resolutions</u>
Rule 37	<u>Legislative Citation</u>
Rule 38	<u>Sine Die and Final Introduction of Bills</u>
Rule 39	<u>Petitions, Remonstrances and Memorials</u>
Rule 40	<u>Messages</u>
Rule 41	<u>Kind and Rank of Committee</u>
Rule 42	<u>Committee of the Whole</u>
Rule 43	<u>Standing Committees and Subcommittees</u>
Rule 44	<u>Organization of Standing Committees and Subcommittees</u>

Rule 45	<u>Powers and Duties of Standing Committees and Subcommittees</u>
Rule 46	<u>Committee on Rules</u>
Rule 47	<u>Ethics Committee</u>
Rule 47(a)	<u>Status of Members Indicted or Convicted of a Crime</u>
Rule 48	<u>Conference Committee</u>
Rule 49	<u>Committee Action</u>
Rule 50	<u>Public Hearings</u>
Rule 51	<u>Investigations</u>
Rule 52	<u>Possession of Bills by Committee</u>
Rule 53	<u>Discharge of Committees</u>
Rule 54	<u>Presentation and Withdrawal of Motions</u>
Rule 55	<u>Privileged Motions</u>
Rule 56	<u>Adjourn</u>
Rule 57	<u>Call of the House</u>
Rule 58	<u>Persons Admitted Under a Call of the House</u>
Rule 59	<u>Lay on the Table</u>
Rule 60	<u>Motion to Take from the Table</u>
Rule 61	<u>Previous Question</u>
Rule 62	<u>Call for Yeas and Nays-Reasons for Vote</u>
Rule 63	<u>Division of a Question</u>
Rule 64	<u>Members Required to be Present and Vote</u>
Rule 64(a)	<u>Chronic Absenteeism</u>
Rule 65	<u>Member Having Private Interest</u>
Rule 65(a)	<u>Professionals-Legislators</u>
Rule 65(b)	<u>Financial Interests in Gaming Entities</u>
Rule 66	<u>Electric Roll Call</u>
Rule 67	<u>Verification and Challenge</u>
Rule 68	<u>Changing Vote</u>
Rule 69	<u>Journal</u>
Rule 70	<u>History of House Bills and House Resolutions</u>
Rule 71	<u>House Calendar</u>
Rule 72	<u>Journal, Transcribing and Documents Rooms</u>
Rule 73	<u>Correspondents</u>
Rule 74	<u>Visitors</u>
Rule 75	<u>Lobbyists</u>
Rule 76	<u>Soliciting Prohibited</u>
Rule 77	<u>Suspending and Changing Rules</u>

Rule 78	<u>Parliamentary Authority</u>
Rule 1 E	<u>Definitions</u>
Rule 2 E	<u>Conduct</u>

The following words and phrases when used in the General Operating Rules of the House of Representatives shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Day" shall mean any calendar day.

"Floor of the House" shall be that area within the Hall of the House between the Speaker's rostrum and the brass rail behind the Members' seats.

"Formal Action" shall mean any vote or motion of a member of a standing committee, standing subcommittee, select committee or rules committee of the House of Representatives to report or not report, amend, consider or table a bill or resolution and the discussion and debate thereof.

"Hall of the House" shall be the floor space within its four walls and does not include the adjoining conference rooms, the lobbies or the upper gallery of the House.

"Legislative Day" shall mean any day that the House shall be in session.

"Press Gallery" shall be within that area known as the Hall of the House as designated by the Speaker.

"Roll Call Vote" shall be a vote taken and displayed by and on the electric roll call board or in the event of a malfunction of the electric roll call board, by such method as shall be determined by the Speaker.

## Rule 1 Speaker Presiding

The Speaker shall preside over the sessions of the House. The Speaker may name a member to preside, but the substitution shall not extend

## **Personal Privilege**

Any member may by leave of the Speaker rise and explain a matter personal to the member, but the member shall not discuss a pending question in the explanation. Questions of personal privilege shall be limited to questions affecting the rights, reputation and conduct of members of the House in their respective capacity.

## **Rule 13**

### **Transgression of House Rules**

If any member in speaking or otherwise transgresses the Rules of the House, the Speaker or any member through the Speaker shall call the member to order, in which case the member shall immediately sit down unless permitted by the House to explain.

The House upon appeal shall decide the case without debate. If the decision is in favor of the member, the member may proceed. If the case requires it, the member shall be liable to censure or other punishment as the House deems proper.

## **Rule 14**

### **Members' and Employees' Expenses**

A member who attends a duly called meeting of a standing or special committee of which he or she is a member when the House is not in session or who is summoned to the State Capitol or elsewhere by the Speaker, or the Majority or Minority Leader of the House, to perform legislative services when the House is not in session shall be reimbursed per day for each day of service, plus mileage to and from the member's residence, at such rates as are established from time to time by the Committee on Rules but not in excess of the applicable maximum mileage rate authorized by the Federal Government. For travel to any location for committee meetings or for travel to the State Capitol for any reason, members cannot receive reimbursement in excess of the applicable maximum per diem rate authorized by the Federal Government. These expenses shall be paid by the Chief Clerk from appropriation accounts under the Chief Clerk's exclusive control and jurisdiction, upon a written request approved by the Speaker of the House, or the Majority or the Minority Leader of the House.

1  
H  
O  
U  
S  
E  
O  
F  
R  
E  
P  
R  
E  
S  
E  
N  
T  
A  
T  
I  
V  
E  
S

An employee of the House summoned by the Speaker or the Majority or Minority Leader of the House to perform legislative services outside of Harrisburg shall be reimbursed for actual expenses and mileage to and from the employee's residence. Such expenses may be paid by the Speaker, Majority or Minority Leader, if they agree to do so, or shall be paid by the Chief Clerk from appropriation accounts under the Chief Clerk's exclusive control and jurisdiction, upon a written request approved by the Speaker, or the Majority or the Minority Leader. District office employees are only permitted to be reimbursed from an account under the control of the Chief Clerk when traveling to Harrisburg for a training program sponsored by either caucus or for travel to a legislative conference approved by the Speaker, the Majority Leader or the Minority Leader. All other travel by district office employees may be reimbursed from the member's accountable expenses or an account under the control of the Speaker, the Majority Leader or the Minority Leader.

Members and employees traveling outside the Commonwealth of Pennsylvania who receive any reimbursement for expenses or travel which reimbursement is from public funds shall file with the Chief Clerk a statement containing his or her name and the name, place, date and the purpose of the function.

Money appropriated specifically to and allocated under a specific symbol number for allowable expenses of members of the House of Representatives shall be reimbursed to each member upon submission of vouchers and any required documentation by each member on forms prepared by the Chief Clerk of the House. No reimbursement shall be made from this account where a member is directly reimbursed for the same purpose from any other appropriation account.

Such allowable expenses of members may be used for any legislative purpose or function, including but not limited to the following:

**(1) Travel expense on legislative business.**

(a) Mileage on session or nonsession days at a rate as may be approved from time to time by the Committee on Rules, but not in excess of the maximum mileage rate authorized by the Federal Government for travel; voucher only.

(b) Miscellaneous transportation on legislative business (taxi,

airport limousine parking, tolls), and expenses of a similar nature; voucher only for any single expense not in excess of \$10.

(c) Travel on legislative business by common carrier other than taxi and airport limousine; voucher and receipt from common carrier.

(d) Car rental; voucher and receipt from rental agency but reimbursement not to exceed in any month an amount as may be approved from time to time by the Committee on Rules. Any amount in excess of the said amount shall be paid by the person renting the car. In no event shall other than American manufactured cars be rented.

(e) Lodging, restaurant charges and other miscellaneous and incidental expenses while away from home. Vouchers only for per diem allowance approved from time to time by the Committee on Rules, but not in excess of the applicable maximum per diem rate authorized by the Federal Government or for actual expenses not in excess of such per diem rate.

(2) Administrative, clerical and professional services for legislative business, except for employment of spouses or any relatives, by blood or marriage.

(a) Administrative and clerical services; voucher and receipt from person employed.

(b) Professional services; voucher and receipt and copy of agreement or contract of employment.

(3) Rent for legislative office space; purchase of office supplies; postage; telephone and answering services; printing services and rental only of office equipment; voucher and vendor's receipt, except for postage expense.

(4) Official entertainment—restaurant and beverage charges; voucher only for expenses. Receipts for entertainment expenses, together with a statement of the reason for the expense, shall be submitted with the request for reimbursement.

(5) Purchase of flags, plaques, publications, photographic services,

110044M/9840

books, and other similar items in connection with legislative activities; voucher and vendor's receipt.

(6) Communications and donations in extending congratulations or sympathy of illness or death; voucher only on expenses not in excess of \$35.

No money appropriated for members' and employees' expenses shall be used for contributions to political parties or their affiliated organizations.

No money appropriated for members' and employees' expenses shall be used for contributions to charitable organizations or for charitable advertisements. This paragraph shall not prevent a de minimis use of legislative resources, in connection with legislative activities, to benefit a bona fide charitable organization that serves a member's district.

Members and employees shall not request reimbursement for the private lease of vehicles leased on a long-term basis. No payments will be made with respect to private, long-term lease vehicle expenses incurred by members or employees except with respect to private, long-term lease arrangements entered into by a member prior to March 13, 2007, payments for which will be made in accord with the rules in place on March 12, 2007. The Chief Clerk is authorized to enter into a master lease agreement with the Department of General Services for the long-term lease of automobiles.

All disbursements made, debts incurred or advancements paid from any appropriation account made to the House or to a member or nonmember officer under a General Appropriation Act or any other appropriation act shall be recorded in a monthly report and filed with the Chief Clerk by the person authorized to make such disbursement, incur any debt or receive any advancement on a form prescribed by the Chief Clerk.

The Chief Clerk shall prescribe the form of all such reports and make such forms available to those persons required to file such reports. Such report form shall include:

(1) As to personnel:

(a) The name, home address, job title, brief description of duties and where they are performed, department or member or members to whom assigned, the name of immediate supervisor and



minimum hours of employment per week of each employee.

(b) The appropriation account from which such employee is compensated, the amount of compensation and whether such person is on salary, per diem or contract.

(2) As to all other expenditures:

(a) To whom it was paid, the amount thereof, and the nature of the goods, services or other purpose for which the expenditure was made.

(b) The appropriation account from which the expenditure was made and the name or names of the person or persons requesting and/or authorizing the same.

The reporting requirements as to personnel may be fulfilled by the maintenance in the Office of the Chief Clerk of the House of an alphabetized file containing the current information for each employee as set forth above.

All monthly reports filed on disbursements made or debts incurred by any officer or member or employee from appropriations made to the House or to a member or nonmember officer under any General Appropriation Act, and the documentation for each disbursement, shall be public information and shall be available in accordance with the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

All vouchers and requisitions relating to all expenditures, expenses, disbursements and other obligations out of all appropriated funds of the House, and the documentation evidencing payment of the vouchers and requisitions, shall be available in accordance with the Right-to-Know Law.

All requests for reimbursement out of any appropriation shall be accompanied by a voucher, or other documents where required, evidencing payment or approval. All requests for reimbursement out of any appropriation payable to a member, nonmember officer or employee shall be void if not submitted within 60 days of the date that the otherwise allowable expense is incurred for any and all otherwise allowable expenses, including without limitation, per diem, mileage and actual expenses incurred. Any such void request for reimbursement may

15044379843

not be paid except pursuant to a motion to suspend this rule for good cause specific to the voided request for reimbursement. In no event shall any payment or reimbursement be made for any otherwise allowable expense incurred on or before March 12, 2007. The voucher form shall be approved and supplied by the Chief Clerk. Receipts or documentation of every expenditure or disbursement which is in excess of the maximum amount as set forth herein shall be attached to the voucher. Where a request for payment is made in advance of an expense actually incurred, the Chief Clerk, before making such advance payment shall require a description satisfactory to the Chief Clerk of the item or service to be purchased or the expense to be incurred, and a receipt or other documentation shall be given to the Chief Clerk after the item or service has been purchased or expense incurred as evidence that such advancement was in fact expended for such purpose.

All reports, vouchers and receipts from which reports are prepared and filed shall be retained by the Chief Clerk, officer or member, as the case may be, for such period of time as may be necessary to enable the Legislative Audit Advisory Commission created pursuant to the act of June 30, 1970 (P.L.442, No.151), entitled "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission," to conduct, through certified public accountants appointed by it, annual audits to assure that such disbursements made or debts incurred were in accordance with Legislative Audit Advisory Commission guidelines and standards as approved by the Committee on Rules, or for a minimum of three years, whichever is longer. All annual audit reports shall be available for public inspection. Photocopies of such reports shall be available for a fee established by the Chief Clerk not to exceed the cost of duplication.

Except as specifically prohibited by law or limited by this rule, all expenditures of funds appropriated to the House or to a member or nonmember officer shall be subject to the expenditure guidelines established by the Rules Committee. The Rules Committee shall establish standards regarding documentation evidencing payment out of any appropriations account made to the House or to a member or nonmember officer.

The Bipartisan Management Committee shall receive and review suggestions from the Comptroller on ways to reduce costs and improve the fiscal operations of the House. The Comptroller, following authorization by the Bipartisan Management Committee, shall implement cost-reducing and other new measures to improve the fiscal operations of the House.

#### **Rule 14 (a)**

#### **Employee Payroll Information**

In accordance with the act of January 10, 1968 (1967 P.L.925, No.417), referred to as the Legislative Officers and Employees Law, the Chief Clerk shall compile, annually, on or prior to the first day of February of each year, a complete list of employees of the House of Representatives. The list shall include the full name, job title, work address and name of immediate supervisor of every employee of the House of Representatives and shall include such information for every person employed for any period of time during the preceding 12 months. In addition to the information required under the Legislative Officers and Employees Law, the list shall include the payroll wage information for those House employees paid during the preceding calendar year. The list shall be available for public inspection in the Office of the Chief Clerk during regular business hours.

#### **Rule 14 (b)**

#### **Electronic Availability of Reports**

In addition to the other methods of availability under Rule 14, all expense reports existing in electronic form shall be provided electronically by the Chief Clerk upon request.

#### **Rule 15**

#### **Time of Meeting**

The House shall convene on the first legislative day of the week at 1:00 P.M. prevailing time, unless otherwise ordered by a roll call vote of the majority of those elected to the House.

On other days the House shall convene at the discretion of the House. No session of the House may begin before 8:00 A.M. nor may any roll call votes be taken after 11:00 P.M. unless exigent circumstances exist,

1504479844

## **Rule 47**

### **Ethics Committee**

As used in the context of this rule, the word "committee" shall mean the Committee on Ethics of the House of Representatives, and the phrase "majority of the committee" shall mean a majority of the members to which the committee is entitled.

The committee shall consist of eight members: four of whom shall be members of the majority party appointed by the Speaker, and four of whom shall be members of the minority party appointed by the Minority Leader. The Speaker shall appoint from the members a chair, vice chair and secretary for the committee. The chair shall be a member of the majority party and the vice chair shall be a member of the minority party.

The chair shall notify all members of the committee at least 24 hours in advance of the date, time and place of a regular meeting. Whenever the chair shall refuse to call a regular meeting, a majority of the committee may vote to call a meeting by giving two days' written notice to the Speaker of the House setting forth the time and place for such meeting. Such notice shall be read in the House and posted in the House Chamber by the Chief Clerk, or a designee. Thereafter, the meeting shall be held at the time and place specified in such notice.

The committee shall compile and distribute a Members' Handbook on Ethics to advise members, officers and employees of the House on matters regarding conflicts of interest, and nonfeasance, malfeasance and misfeasance in legislative duties.

Each member shall be required to complete two hours of ethics education and training each legislative term. For the purposes of this rule, a member shall be excused from one hour of ethics training for any full year the member was absent due to illness, injury, military service or any other permissible excuse under Rule 64(a). The committee shall be responsible for planning and offering ethics education programs.

The committee shall conduct its investigations, hearings and meetings relating to a specific investigation or a specific member, officer or employee of the House in closed session and the fact that such investigation is being conducted or to be conducted or that hearings or such meetings are being held or are to be held shall be confidential information unless the person subject to investigation advises the

committee in writing that he or she elects that such hearings shall be held publicly. In the event of such an election, the committee shall furnish such person a public hearing. All other meetings of the committee shall be open to the public.

15044379846

The committee shall receive complaints against members, officers and employees of the House, and persons registered or carrying on activities regulated by 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure), alleging illegal or unethical conduct. Any such complaint must be in writing sworn or affirmed to by the person filing the complaint under penalty of law under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and must set forth in detail the conduct in question and the section of the "Legislative Code of Ethics," the provision of 65 Pa.C.S. Ch. 13A, the Ethical Conduct Rules of the House of Representatives or the House rule violated. As a general rule, no person shall disclose or acknowledge to any other person any information relating to the filing of a complaint, except as otherwise authorized under this rule or to carry out a function of the committee. The committee shall make a preliminary investigation of the complaint, and if it is determined by a majority of the committee that a violation of the rule or law may have occurred, the person against whom the complaint has been brought shall be notified in writing and given a copy of the complaint. If at any time a majority of the committee determines that the complaint was a "frivolous complaint" as defined under 65 Pa.C.S. § 1102 (relating to definitions), or made without probable cause and primarily for a purpose other than that of reporting illegal or unethical conduct, then the committee shall notify the complainant and the person against whom the complaint has been brought of such determination. Within 15 days after receipt of the complaint, such person may file a written answer thereto with the committee. Upon receipt of the answer, by vote of a majority of the committee, the committee shall either dismiss the complaint within ten days or proceed with a formal investigation, to include hearings, not less than ten days nor more than 30 days after notice in writing to the persons so charged. Failure of the person charged to file an answer shall not be deemed to be an admission or create an inference or presumption that the complaint is true, and such failure to file an answer shall not prohibit a majority of the committee from either proceeding with a formal investigation or dismissing the complaint.

A majority of the committee may initiate a preliminary investigation of the suspected violation of the Legislative Code of Ethics, 65 Pa.C.S. Ch. 13A, the Ethical Conduct Rules of the House of Representatives or a House rule by a member, officer or employee of the House or lobbyist.

15044376847

If it is determined by a majority of the committee that a violation of a rule or law may have occurred, the person in question shall be notified in writing of the conduct in question and the section of the "Legislative Code of Ethics," the provision of 65 Pa.C.S. Ch. 13A, the Ethical Conduct Rules of the House of Representatives or the House rule violated. Within 15 days, such person may file a written answer thereto. Upon receipt of the answer, by vote of a majority of the committee, the committee shall either dismiss the charges within ten days or proceed with a formal investigation, to include hearings, not less than ten days nor more than 30 days after notice in writing to the person so charged. Failure of the person charged to file an answer shall not be deemed to be an admission or create an inference or presumption that the charge is true, and such failure to file an answer shall not prohibit a majority of the committee from either proceeding with a formal investigation or dismissing the charge.

In the event that the committee shall elect to proceed with a formal investigation of the conduct of any member, officer or employee of the House, the committee shall employ independent counsel who shall not be employed by the House for any other purpose or in any other capacity during such investigation.

All constitutional rights of any person under investigation shall be preserved, and such person shall be entitled to present evidence, cross-examine witnesses, face his or her accuser, and be represented by counsel.

The chair may continue any hearing for reasonable cause, and upon the vote of a majority of the committee or upon the request of the person subject to investigation, the chair shall issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under formal investigation by the committee. The committee may administer oaths or affirmations and examine and receive evidence.

All testimony, documents, records, data, statements or information received by the committee in the course of any investigation shall be private and confidential except in the case of public hearings or in a report to the House. No report shall be made to the House unless a majority of the committee has made a finding of unethical or illegal conduct on the part of the person under investigation. No finding of unethical or illegal conduct shall be valid unless signed by at least a majority of the committee. Any such report may include a minority

report. The committee shall have the authority to recommend to the House action as appropriate. No action shall be taken by the House on any finding of illegal or unethical conduct nor shall such finding or report containing such finding be made public sooner than seven days after a copy of the finding is sent by certified mail to the member, officer or employee under investigation.

The committee may meet with a committee of the Senate to hold investigations or hearings involving employees of the two houses jointly or officers or employees of the Legislative Reference Bureau, the Joint State Government Commission, the Local Government Commission, the Legislative Budget and Finance Committee and the Legislative Data Processing Committee; provided, however, that no action may be taken at a joint meeting unless it is approved by a majority of the committee.

In the event that a member of the committee shall be under investigation, such member shall be temporarily replaced on the committee in a like manner as said member's original appointment.

The committee, at the request of a member, officer or employee concerned about an ethical problem relating to the member, officer or employee alone or in conjunction with others, may render advisory opinions with regard to questions pertaining to legislative ethics or decorum. Such advisory opinions shall be confidential and shall apply exclusively to the requestor. No requestor who acts in good faith on an advisory opinion issued to that requestor by the Ethics Committee shall be subject to any sanctions for so acting if the material facts are as stated in the advisory opinion request.

A member shall not create, maintain or cause to be created or maintained a legislative nonprofit organization. A "legislative nonprofit organization" means a nonprofit corporation or other entity whose primary purpose is to receive funds under the General Appropriations Act or another appropriations act at the discretion or by reason of the influence of a member for the use at the direction or discretion of the member. The Ethics Committee shall issue to any member upon the member's request a legislative nonprofit organization opinion with respect to the member's duties under this rule. The Ethics Committee shall, within 14 days, issue the legislative nonprofit organization opinion. No member who acts in good faith on a legislative nonprofit organization opinion issued to that member by the Ethics Committee shall be subject to any sanctions for so acting if the material facts are as stated in the legislative nonprofit organization opinion request. The

15044379848

Ethics Committee's legislative nonprofit organization opinions shall be public records and may from time to time be published, except that the member requesting the legislative nonprofit organization opinion may require that the legislative nonprofit organization opinion contain deletions and changes necessary to protect the identity of the persons involved.

Any member of the committee breaching the confidentiality of materials and events as set forth in this rule shall be removed immediately from the committee and replaced by another member of the House in a like manner as said member's original appointment.

The committee may adopt rules of procedure for the orderly conduct of its affairs, investigations, hearings and meetings, which rules are not inconsistent with this rule.

The committee shall continue to exist and have authority and power to function after the sine die adjournment of the General Assembly and shall so continue until the expiration of the then current term of office of the members of the committee.

#### **Rule 47 (a)**

#### **Status of Members Indicted or Convicted of a Crime**

When an indictment is returned or a charge is filed before a court of record against a member of the House, and the gravamen of the indictment or charge is directly related to the member's conduct as a committee chair or ranking minority committee member or in a position of leadership or is one which would render the member ineligible to the General Assembly under section 7 of Article II of the Constitution of Pennsylvania, the member shall be relieved of committee chair status, ranking minority committee member status or leadership position until the indictment or charge is disposed of, but the member shall otherwise continue to function as a Representative, including voting, and shall continue to be paid.

If, during the same legislative session, the indictment or charge is quashed, dismissed or withdrawn, or the court finds that the member is not guilty of the offense alleged, the member shall immediately be restored to committee chair status, ranking minority committee member status or the leadership position retroactively from which he or she was suspended.



rules and shall require for approval a majority vote of the members by a roll call vote.

## **Rule 78**

### **Parliamentary Authority**

Mason's Manual supplemented by Jefferson's Manual of Legislative Procedure shall be the parliamentary authority of the House, if applicable and not inconsistent with the Constitution of Pennsylvania, the laws of Pennsylvania applicable to the General Assembly, the Rules of the House, the established precedents of the House and the established customs and usages of the House.

RESOLVED, That the Rules of the House of Representatives be amended by adding rules to read:

## **ETHICAL CONDUCT RULES OF THE HOUSE OF REPRESENTATIVES**

### **RULE 1 E**

#### **Definitions**

The following words and phrases when used in the Ethical Conduct Rules of the House of Representatives shall have the meanings given to them in this Rule unless the context clearly indicates otherwise:

"Campaign." An effort organized in support of or opposition to the nomination, election or re-election of an individual to elective office.

"Campaign activity." An activity on behalf of a candidate, political party, political committee, campaign, campaign committee, political organization or political body which is intended to influence the outcome of an election, including any of the following:

- (1) Organizing a campaign meeting, campaign rally or other campaign event, including a fund-raiser where campaign contributions are solicited or received.
- (2) Preparing or completing responses to questionnaires that are intended primarily for campaign use.

1504476850

15044476851

(3) Preparing, reviewing or filing a campaign finance report.

(4) Conducting background research on a candidate or an elected official to be used or intended to be used to influence the outcome of an election.

(5) Preparing, conducting or participating in campaign polling.

(6) Preparing, circulating or filing a candidate nominating petition or papers.

(7) Participating in, preparing, reviewing or filing a legal challenge to a nominating petition or papers.

(8) Preparing, distributing or mailing campaign literature, campaign signs or other campaign material on behalf of or in opposition to any candidate.

(9) Managing a campaign.

(10) Participating in, preparing, reviewing or filing documents in a recount, challenge or contest of an election.

(11) Posting campaign-related information on a website or social media website.

(12) Soliciting an individual's vote for a candidate.

(13) Working at a polling place.

"Campaign contribution." A monetary or in-kind contribution made to a candidate or a campaign.

"Campaign polling." The preparation, compilation, collection or gathering of information, including focus groups and surveys, reflecting public opinion as to an elected official, group of elected officials, candidate, group of candidates, political party, political committee, campaign, campaign committee, political organization or political body that is intended to be used for the purpose of supporting or opposing the nomination, election or re-election of an individual to elective office.

**"Candidate."** An individual seeking nomination, election or re-election to an elective office.

**"De minimus."** An economic consequence which has an insignificant effect.

**"Elected official."** An individual elected by the public to serve a term in an elective office. The term shall include an individual appointed to fill an unexpired term in an elective office.

**"Election."** A general, special, municipal or primary election, including elections at which a candidate for elective office in a Federal governmental body is on the ballot.

**"Elective office."** A position in a governmental body to which an individual is required under the Constitution of Pennsylvania, the Constitution of the United States or by law to be elected by the public.

**"House employee."** A person employed by the Office of the Speaker of the House of Representatives, the House Republican Caucus or the House Democratic Caucus.

**"House office."** Legislative offices and work spaces, including:

- (1) An office assigned to a Member for the conduct of legislative duties, wherever located.
- (2) House conference or meeting rooms located in the Capitol complex.
- (3) A legislative district office.

**"House resources."** House-owned or House-leased equipment including telephones, computer hardware or software, copiers, scanners, fax machines, file cabinets or other office furniture, cell phones, personal digital assistants or similar electronic devices, and office supplies.

**"House work time."** Compensated time spent in the performance of duties by a House employee.

**"Mass communication."** The term shall include, but not be limited to, the following if they are paid for with House funds:

1  
100444051  
UNITED STATES HOUSE OF REPRESENTATIVES

(1) Any newsletter or similar mailing of more than 50 pieces a day in which the content of the matter is substantially identical.

(2) Any electronic mail transmission to more than 50 addresses per day in which the content of the matter is substantially identical.

(3) Any public service announcement via radio or television broadcast that depicts the name, voice or image of a Member.

(4) Any telemarketing activities or robocalls on behalf of a Member, except for limited surveys to determine public opinion on various issues that do not use the name, voice or image of a Member.

"Member." An individual elected to serve in the Pennsylvania House of Representatives.

"Official mailing lists." Any list containing individuals, companies or vendors, including names, addresses, telephone numbers or e-mail addresses that are procured, compiled, maintained or produced with House funds.

"Own time." A House employee's time that is distinct from House work time and includes time that is spent on vacation/annual leave and personal leave. The term does not include compensatory leave.

## **RULE 2 E**

### **Conduct**

No campaign activity may be conducted by a House employee on House work time. No campaign activity may be conducted in a House office or with House resources or House funds. The following shall apply:

(1) House employees are permitted to engage in campaign activities on their own time.

(2) The solicitation or receipt of campaign contributions in a House office, on House work time or with House resources is prohibited. If an unsolicited contribution is sent to a House office through the mail or in an unidentifiable form, the employee who receives it shall turn it over to the applicable campaign and, within two business days, notify the donor, if known, that campaign contributions should not be sent or delivered to

a House office.

**(3) No House employee may be allocated any leave time for time spent engaging in campaign activities on his or her own time.**

**(4) A House employee, with the permission of his or her employer, may go on leave without pay or benefits to engage in campaign activities.**

**(5) A House employee who announces his or her candidacy for a House seat or files nomination petitions or papers or for whom a nomination certificate is filed to run for a House seat shall be put on leave without pay or benefits during the duration of his or her candidacy unless the employee voluntarily leaves House employment.**

**(6) De minimis campaign activities may be unavoidable for a Member or House employee in the course of their official duties and shall not be considered a violation of these ethical conduct rules. This includes the following activities:**

**(a) A Member or House employee may, in responding to inquiries from the public, need to address incidental questions that relate to a Member's or another person's campaign or a related legislative record.**

**(b) A Member or House employee may provide scheduling assistance and information to campaign staff to ensure that no conflict occurs among the Member's campaign schedule, official schedule and personal schedule.**

**(c) A Member or House employee may engage in political conversation in the natural course of personal communication.**

**(7) A Member's official State website or State social media website shall not contain a link to his or her campaign website or campaign social media website.**

**(8) No House employee may be required to make a campaign contribution as a condition of employment or continued employment.**

**(9) No House employee may be required to perform any campaign activity, on House work time or the employee's own time, as a condition of employment or continued employment.**

20170624001

1  
LEO44M708JUN

(10) No House employee who agrees or offers to participate in a campaign activity on the employee's own time, or makes a campaign contribution, shall receive additional House compensation or employee benefit in the form of a salary adjustment, bonus, compensatory time off, continued employment or any other similar benefit in return.

(11) A House employee who refuses to participate in a campaign activity or to make a campaign contribution shall not be sanctioned for that refusal.

(12) Official House mailing lists shall be used solely for legislative purposes and shall not be provided to a candidate, political party, political committee, campaign, campaign committee political organization or political body to be used for any campaign activity.

(13) House computers shall not be used to create or update any mailing list that identifies the listed individuals as campaign volunteers or campaign contributors to a candidate, political party, political committee, campaign or campaign committee, political organization or political body.

(14) No list may be developed by a Member or a House employee for the purpose of monitoring or tracking campaign activity or campaign contributions of a House employee.

(15) No mass communication shall be made at the direction or on behalf of any Member which is delivered to a postal facility or otherwise distributed within 60 days immediately preceding an election at which the Member is a candidate. Nothing in this subsection shall apply to any mass communication:

(a) in response to inquiries or affirmative requests from persons to whom the matter is communicated,

(b) sent to colleagues in the General Assembly or other government officials, or

(c) which consists entirely of news releases to the communications media.

(16) No House employee may be required to perform any task unrelated

**പിന്നോക്ക വിഭാഗം**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	52
--	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	----

•

•  
•  
•  
•  
•  
•  
•

# Appendix C

15044376857



# OPINION OF THE COMMISSION

Before: Louis W. Fryman, Chair  
John J. Bolger, Vice Chair  
Donald M. McCurdy  
Paul M. Henry  
Raquel K. Bergen  
Nicholas A. Colafella  
Reverend Scott Pilarz

DATE DECIDED: 1/9/07  
DATE MAILED: 1/23/07

07-003

Janice T. Dennis  
4251 East Stancliff Road  
P.O. Box 104  
McKean, PA 16426-0104

Dear Ms. Dennis:

This Opinion is issued in response to your advisory request letter dated October 6, 2006.

## I. ISSUE:

Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., would impose prohibitions or restrictions upon a Township Secretary/Zoning Administrator with regard to engaging in communications pertaining to her candidacy for Township Supervisor during her Township work hours or while she is otherwise performing duties for the Township or is present at the Township office property.

## II. FACTUAL BASIS FOR DETERMINATION:

As Secretary/Zoning Administrator for McKean Township ("Township"), you request an advisory opinion from this Commission based upon the following submitted facts.

As the appointed Township Secretary, you work directly under the Board of Supervisors in a one-person office. Your responsibilities include depositing monies and drafting resolutions and ordinances. You answer all telephone calls to the Township, and you assist persons who come into the Township building. You also serve as the Township's appointed Zoning Administrator.

In 2007, you will be running for the office of Township Supervisor. You ask whether

the Ethics Act would impose prohibitions or restrictions upon you with regard to engaging in communications pertaining to your candidacy in the course of performing your Township duties. You specifically inquire as to any limitations that would be placed upon you by the Ethics Act with regard to responding to questions about your candidacy posed by persons telephoning or coming into the Township office.

By letter dated November 8, 2006, you were notified of the date, time and location of the public meeting at which your request would be considered.

### **III. DISCUSSION:**

It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, this Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

As the Township Secretary/Zoning Administrator, you are a public official/public employee subject to the provisions of the Ethics Act.

Section 1103(a) of the Ethics Act provides:

#### **§ 1103. Restricted Activities**

(a) **Conflict of interest.**—No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1103(a).

The following terms pertaining to conflicts of interest under the Ethics Act are defined as follows:

#### **§ 1102. Definitions**

**"Conflict" or "conflict of interest."** Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

**"Authority of office or employment."** The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

65 Pa.C.S. § 1102.

You inquire as to whether the Ethics Act would impose prohibitions or restrictions upon you with regard to engaging in communications pertaining to your candidacy for Township Supervisor in the course of performing your Township duties. You specifically inquire as to the propriety of responding to questions about your candidacy posed by persons telephoning the Township or coming into the Township office.

In applying Section 1103(a) of the Ethics Act to your inquiry, it is noted that the use of government staff, time, equipment, facilities, or property for non-governmental purposes—including business, personal, or political purposes—is generally prohibited and may form the basis for a violation of Section 1103(a) of the Ethics Act. See, e.g., Confidential Opinion, 05-001; Heck, Order 1251, Holt, Order 1153 (business purposes); Moore, Order 1317, Meduka, Order 1277, Sullivan, Order 1245, Dovidio, Order 1202 (personal purposes); Habay, Order 1313, Livingston, Order 1030, Rockefeller, Order 1004, Freind, Order 800 (political purposes). This Commission has long held that government offices, facilities, equipment, and personnel are to be used for governmental purposes and not for private, business or campaign/re-election activities. See, Smythe, Order 1121; Rakowsky, Order 943; Eck, Order 787; Freind, *supra*; Ferlo, Opinion 97-005.

Based upon the above precedents, you are advised that generally, Section 1103(a) of the Ethics Act would prohibit you from engaging in conversations regarding your candidacy during your Township work hours or while you are otherwise performing duties for the Township or are present at the Township office property.

However, we recognize that at times a public official/public employee might receive unsolicited questions regarding her candidacy without in any way inviting such questions. We also recognize that it might be necessary at times to provide a brief response to such an unsolicited question in order to curtail further non-governmental communications in the government work place. Cf., Confidential Opinion, 05-001, *supra*.

We further note that the statutory definition of "conflict" or "conflict of interest" contains an exclusion, hereinafter referred to as the "de minimis" exclusion, which precludes a finding of a conflict of interest as to an action having a de minimis (insignificant) economic impact. See, Bixler v. State Ethics Commission, 847 A.2d 785 (Pa. Cmwlth. 2004); Kolb, Order 1322; Schweinsburg, Order 900.

A straightforward application of the de minimis exclusion to the question that you have posed necessitates the conclusion that Section 1103(a) of the Ethics Act would not prohibit you from using government equipment/facilities and time on a very limited basis to reply to unsolicited questions regarding your candidacy for the office of Township Supervisor under the following conditions: (1) the use of government equipment/facilities and time for non-governmental purposes would have to be so strictly limited as to have a de minimis economic impact; and (2) any such communications on your part would have to be limited to merely acknowledging your candidacy and stating that pursuant to the Ethics Act, public officials and public employees are prohibited from engaging in communications of a non-governmental nature using governmental equipment, facilities or time.

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the Second Class Township Code.

#### IV. CONCLUSION:

A Township Secretary/Zoning Administrator is a public official/public employee

1-1007474-000000

subject to the provisions of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa. C.S. § 1101 et seq. The use of government staff, time, equipment, facilities, or property for non-governmental purposes—including business, personal, or political purposes—is generally prohibited and may form the basis for a violation of Section 1103(a) of the Ethics Act. Generally, Section 1103(a) of the Ethics Act would prohibit a Township Secretary/Zoning Administrator from engaging in conversations regarding her candidacy for public office during her Township work hours or while she is otherwise performing duties for the Township or is present at the Township office property. Section 1103(a) of the Ethics Act would not prohibit a Township Secretary/Zoning Administrator from using government equipment/facilities and time on a very limited basis to reply to unsolicited questions regarding her candidacy for public office under the following conditions: (1) the use of government equipment/facilities and time for non-governmental purposes would have to be so strictly limited as to have a de minimis economic impact; and (2) any such communications on the part of the Township Secretary/Zoning Administrator would have to be limited to merely acknowledging her candidacy and stating that pursuant to the Ethics Act, public officials and public employees are prohibited from engaging in communications of a non-governmental nature using governmental equipment, facilities or time.

The propriety of the proposed conduct has only been addressed under the Ethics Act.

Pursuant to Section 1107(10), the person who acts in good faith on this Opinion issued to him shall not be subject to criminal or civil penalties for so acting provided the material facts are as stated in the request.

This letter is a public record and will be made available as such.

Finally, a party may request the Commission to reconsider its Opinion. The reconsideration request must be received at this Commission within thirty days of the mailing date of this Opinion. The party requesting reconsideration must include a detailed explanation of the reasons as to why reconsideration should be granted in conformity with 51 Pa. Code § 21.29(b).

By the Commission,

Louis W. Fryman  
Chair

15044376861